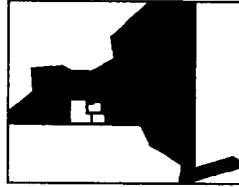


Southern Tier Central Regional Planning & Development Board



R03-OW-2010-0736

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October 21, 2010

Marcia D. Weber
Executive Director

NOV 01 2010

Water Docket
Environmental Protection Agency
Mail code: 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: Draft Chesapeake Bay TMDL
Docket ID: EPA-R03-OW-2010-0736

To Whom It May Concern:

Southern Tier Central Regional Planning and Development Board (STCRPDB) is concerned about the draft Chesapeake Bay Total Maximum Daily Load (TMDL) issued by the Environmental Protection Agency (EPA). We recognize the need for improved water quality in the Bay. However, the approach presented in the Draft TMDL is neither equitable nor achievable.

Draft Allocations

Basic fairness principles should be exercised by the EPA in establishing TMDL allocations for the states. We request that the following points be considered when establishing New York's share of the allocated load:

- Current contribution to Bay impairment: New York's water quality far surpasses that of any other jurisdiction within the Bay watershed. If each of the Bay states had New York's current water quality (as measured near the Pennsylvania border), excess nutrient and sediment issues would not exist in the Chesapeake Bay. In addition, due to the distance from the Bay itself, the proportion of each pollutant discharged to New York's waters that reaches the Bay (delivery factor) is also low. New York State's impact on the Bay's water quality is thus significantly less than that of other states closer to the Bay.
- Cost to improve the quality of clean water: Because New York's water quality is relatively high and delivery factors are low, it will cost substantially more for New York State to remove a pound of delivered pollutant from the Bay than it would for other watershed states.
- Economic benefits from the Chesapeake Bay: "States that benefit most from the Chesapeake Bay recovery must do more." This principle should not have been removed from EPA's allocation methodology. New York State is remote from the Chesapeake Bay and would derive no direct benefit from improvements to its water quality. It is unfair to ask taxpayers and businesses in headwater states to pay for improved Bay water quality when the resulting economic benefits would be limited to states adjacent to the Bay.

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- Population growth and land use changes: Although the population within the Chesapeake Bay Watershed had increased by 3.5 million people over the last two decades, the population within the New York portion of the watershed has stagnated or declined over the same period. With only nominal increases in urban land cover and significant increases in forest cover, New York should not be expected to compensate for the water quality impairments that result from population growth and land use changes in other parts of the watershed.
- Lack of confidence in the “Bay Watershed Model”: There is a general lack of confidence regarding the Chesapeake Bay Watershed Computer Model in regards to its ability to accurately represent current nutrient and sediment loads from within the watershed and predict reductions in those loads due to proposed improvements and management programs. Large deviations in estimated delivered nutrient loads have occurred from one version of this model to the next. This casts doubt on the ability of this model to be an effective and reasonable planning tool, as well as the basis for establishing TMDLs.
- Atmospheric nitrogen from other states: It is estimated that approximately 20-25 percent of the total nitrogen delivered to the Bay from New York originates from airborne pollution from outside of the state.

The allocations assigned to New York State in the Draft TMDL fail to incorporate these fairness principles. In addition to being inequitable, the proposed allocations are likely unachievable. Attempting to meet these goals would require significant and costly implementation measures that could jeopardize the economic well-being of communities within the watershed. We thus request that the proposed allocations be replaced with reasonable allocations that are both equitable and achievable.

Proposed Federal Backstop Actions

In light of the unreasonable allocations provided to New York and the limited time available for the states to develop Draft Watershed Implementation Plans (WIPs), it is not surprising that EPA’s evaluation of the New York WIP found shortfalls in pollution loading reductions. As a result of these perceived shortcomings, the Draft TMDL proposes that New York be subject to “high-level backstop allocations.” The proposed backstop actions focus on federally-permitted pollution sources, but do not represent achievable or cost-effective means of reaching the desired load reductions. In New York, the regulated sources (wastewater treatment plants, animal feeding operations, and municipal separate storm sewer systems (MS4s)) represent a small fraction of the pollution sources. The proposed actions would impose extreme economic hardship on watershed residents, without producing the desired improvements in delivered load.

The proposed federal backstop actions do not constitute a credible strategy for achieving water quality standards in the Bay and should thus be eliminated. EPA should instead engage in constructive partnerships with the states to develop realistic, economically viable water quality improvement strategies and identify sources of funding to implement those strategies.

Schedule for Release of Final TMDL

The proposed timeline for establishing the final TMDL (by December 31, 2010) does not allow sufficient time for EPA to develop equitable allocations or for the states to prepare realistic

Watershed Implementation Plans to meet those allocations. New York's Local Pilot Project (for which STCRPDB is the local partner) has not yet resulted in any recommendations concerning the achievability and cost-effectiveness of the proposed scenarios that are being evaluated. These analyses were intended to inform the development of New York's Draft WIP, which was submitted on September 1. Technical support to the states has also been delayed. Additional time and guidance are needed to develop a TMDL and state WIPs that are equitable and achievable.

If the final TMDL is to succeed in achieving actual restoration of the Chesapeake Bay, the allocations must be revised to be both equitable and theoretically achievable. State Watershed Implementation Plans should present reasonable strategies for meeting those allocations — without federal backstop requirements. In addition, implementation funding is needed, particularly in states that will not receive economic benefits from Chesapeake Bay restoration. If the TMDL is established before these conditions are met, it is unlikely to achieve the goal of restoring water quality in the Chesapeake Bay.

Thank you for your consideration of this request to revise the TMDL so that New York is treated fairly.

Sincerely,



Thomas J. Santulli
Chair

Cc: Senator Kirsten E. Gillibrand
 Senator Charles E. Schumer
 Congressman Michael A. Arcuri
 Congressman Maurice D. Hinchey
 Congressman Christopher John Lee
 Congressman Daniel B. Maffei
 Congressman Scott Murphy
 Congressman William L. Owens
 Congressman Paul Tonko
 Peter Grannis, NYSDEC Commissioner
 Ron Entringer, NYSDEC, Water Quality Management Section Chief
 Peter Freehafer, NYSDEC, Chesapeake Bay Coordinator
 Judith Enck, EPA Regional Administrator, Region 2
 James Edward Acting Director, EPA Chesapeake Bay Program Office